

1 HONORABLE THOMAS S. ZILLY
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 14 PACIFIC SOUND RESOURCES, a
Washington non-profit corporation; and
15 THE PORT OF SEATTLE, a Washington
municipal corporation,

16 Plaintiffs,

17 v.

18 19 THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY, a
Delaware corporation; J.H. BAXTER &
CO., a California limited partnership; J.H.
BAXTER & CO., a California corporation;
and J.H. BAXTER & CO., INC., a
California corporation,

20 Defendants.

No. C04-1654Z

DEFENDANT THE BURLINGTON
NORTHERN AND SANTA FE
RAILWAY COMPANY'S INITIAL
DISCLOSURES

21 Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendant The Burlington
22 Northern and Santa Fe Railway Company ("BNSF") provides the following initial
disclosures:

23 I. **RULE 26(a)(1)(A): INDIVIDUALS THAT MAY HAVE**
DISCOVERABLE INFORMATION

24 25 1. Blaine E. Bilderback. Address: BNSF, 2500 Lou Menk Drive, AOB 3, Fort
Worth, TX 76131. Subjects of information: the nature of any interests in real property

1 formerly held by BNSF's predecessors at or adjacent to the former location of the wood
 2 treating facility commonly referred to as the Wyckoff West Seattle Wood Treating Plant
 3 ("the Plant").

4 2. James T. Obermiller. Address: BNSF, 2500 Lou Menk Drive, AOB 3, Fort
 5 Worth, TX 76131. Subjects of information: the location and authenticity of any corporate
 6 records in BNSF's possession potentially relating to the Plant including any contracts or
 7 agreements between BNSF's predecessors and former owners or operators of the Plant.

8 3. Clyde E. Lobb. Address: BNSF, 2500 Lou Menk Drive, AOB 3, Fort Worth,
 9 TX 76131. Subjects of information: the acquisition of wood products and wood-treating
 10 chemicals by BNSF or one or more of its predecessors which may have been used at the
 11 Plant.

12 4. James Taplin. Last known address: 7125 Fauntleroy Way SW, West Seattle,
 13 WA 98136. Subjects of information: his responsibilities to maintain records and inspect
 14 treated wood products at the Plant, as an employee of certain of BNSF's predecessors from
 15 about 1966 to 1980; the lack of involvement of BNSF's predecessors in wood treating
 16 operations or the handling of materials at the Plant; in general terms, activities conducted at
 17 and the layout of the Plant from about 1966 to 1980.

18 5. Glen Haug. Address: BNSF, 2454 Occidental Ave., South, Seattle, WA
 19 98134. Subjects of information: the nature of any interests in personal property formerly
 20 held by BNSF's predecessors at or adjacent to the former location of the Plant.

21 6. Bruce Sheppard. Address: BNSF, 2454 Occidental Ave., South, Seattle, WA
 22 98134. Subjects of information: in general terms, (1) the nature and extent of environmental
 23 contamination at the Plant and the Marine Sediments Unit of the Pacific Sound Resources
 24 Superfund Site, and (2) the remedial actions and development activities implemented at the
 25 Plant by the Port.

1 In the parties' Combined Joint Status Report and Discovery Plan, Plaintiffs expressed
 2 their belief that BNSF's prior disclosures do not fully satisfy the requirements of Fed. R. Civ.
 3 P. 26(a)(1)(A) on the alleged ground that, although BNSF provided the names of a few
 4 employees and former employees who have knowledge of discoverable information, "it has
 5 not conducted a diligent search of its own documents to determine whether there are other
 6 persons with knowledge of the site at issue." Based on the information available to BNSF at
 7 this time, the preceding disclosures fully satisfy the requirements of Rule 26(a)(1)(A) to
 8 disclose each individual likely to have discoverable information that BNSF may use to
 9 support its claims or defenses. BNSF denies that Rule 26(a)(1)(A) requires BNSF to search
 10 its own documents to determine whether there are other persons "with knowledge of the site
 11 at issue." BNSF reserves the right to supplement this disclosure and provide the names of
 12 any additional individuals who it subsequently determines are likely to have discoverable
 13 information that BNSF may use to support its claims or defenses, identifying the subjects of
 14 the information.

15 **II. RULE 26(a)(1)(B): DOCUMENTS, DATA, COMPILATIONS AND**
TANGIBLE THINGS

16 In an earlier action filed by Plaintiffs in 2002, and now pending before the
 17 Washington Court of Appeals, Plaintiffs, BNSF, and the other parties to that action
 18 voluntarily disclosed a large number of documents and responded to certain discovery
 19 requests. In addition, Plaintiffs took the depositions of three BNSF employees pursuant to a
 20 deposition notice issued under Washington Civil Rule 30(b)(6) and took the deposition of
 21 one former employee of certain of BNSF's predecessors. As stated in the parties' Combined
 22 Joint Status Report and Discovery Plan, counsel have agreed that the documents disclosed in
 23 the earlier action need not be produced again, and that the parties' prior disclosures and
 24 written discovery responses fulfill, in part, the parties' obligations to disclose documents
 25 under Fed. R. Civ. P. 26(a)(1)(B), except to the extent issues specific to this case are not
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1 addressed in the previously disclosed documents.

2 At this time, BNSF has no knowledge of any additional documents, other than those
 3 documents previously disclosed by Plaintiffs, BNSF, and the other parties to the earlier
 4 action, and the transcripts of the depositions taken in the earlier action, that BNSF may use to
 5 support its claims or defenses in this action. BNSF reserves the right to supplement this
 6 disclosure and provide any documents, data compilations, and tangible things that it
 7 discovers subsequently or inadvertently omitted.

8 In the parties' Combined Joint Status Report and Discovery Plan, Plaintiffs expressed
 9 their belief that BNSF's prior disclosures do not fully satisfy the requirements of Fed. R. Civ.
 10 P. 26(a)(1)(B) on the alleged ground that BNSF offered to make available for review
 11 hundreds of boxes of documents in a Seattle warehouse without providing an index or guide
 12 as to the contents of the boxes. Contrary to Plaintiffs' assertion, BNSF did provide Plaintiffs
 13 with the only available index to the documents in the warehouse. Moreover, BNSF offered
 14 to produce the documents as they are kept in the normal course of business, as permissible
 15 under Fed. R. Civ. P. 34(b). To the best of BNSF's knowledge, the documents in the
 16 warehouse relate to the activities or interests of BNSF or BNSF's predecessors at a large
 17 number of locations throughout the Pacific Northwest over a long period of time. BNSF is
 18 unaware whether any of the documents may include information specific to the Plant, but
 19 based on its counsel's review of the index, BNSF believes the documents do not contain
 20 information relevant to the issues raised in this action. Plaintiffs are free to review the
 21 documents in whole or in part to make their own determination upon reasonable notice to
 22 BNSF.

23 **III. RULE 26(a)(1)(C): DAMAGES**

24 BNSF has asserted affirmative defenses, counterclaims, and cross-claims under
 25 which, if it is held liable for any damages alleged in the Complaint, BNSF will be entitled to
 26 indemnification and/or contribution from plaintiffs or plaintiffs and other parties. At this

1 time, BNSF is not able to compute the amount it may be entitled to in indemnification or
 2 contribution since the liabilities of the parties and the amount of damages at issue have not
 3 yet been established.

4 At this time, BNSF has not incurred response or remedial action costs in connection
 5 with the Marine Sediments Operable Unit of the PSR Superfund Site, with the exception of
 6 its attorneys' fees, expenses, and costs incurred in this action. If BNSF is the prevailing
 7 party in this action, it will be entitled to recover its attorneys' fees, expenses, and costs
 8 pursuant to RCW 70.105D.080.

9 **IV. RULE 26(a)(1)(D): INSURANCE**

10 BNSF maintains a liability insurance policy that may provide coverage to satisfy part
 11 or all of any judgment that may be entered in this action against BNSF or to reimburse or
 12 indemnify BNSF for any payments made to satisfy any such judgment. BNSF would
 13 produce a copy of the policy pursuant to a mutual protective order executed by all parties to
 14 strictly limit access to and distribution or copying of policies produced by any party to ensure
 15 that such policies would be reviewed for purposes of this litigation only and not disclosed to
 16 any other person or entity for any purpose whatsoever. BNSF reserves the right to
 17 supplement this disclosure and provide any information relating to insurance that it discovers
 18 subsequently or inadvertently omitted.

19 **Reservation of Rights**

20 These initial disclosures are made based on information reasonably available and
 21 known to BNSF at the time of this disclosure. BNSF specifically reserves the right to
 22 supplement or amend these disclosures to provide information hereafter acquired or located,
 23 or as otherwise provided by Rule 26 of the Federal Rules of Civil Procedure.

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1 DATED: November 5, 2004
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BULLIVANT HOUSER BAILEY PC

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CERTIFICATE OF SERVICE

I hereby certify that on Friday, November 05, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

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